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September 19, 2023

Senator Craig Hickman, Senate Chair
Representative Laura Supica, House Chair
Members of the Joint Standing Committee on Veteran's and Legal Affairs
100 State House Station
Augusta, ME 04333-0100

RE: PL 2021, c. 592 (LD 1750, An Act To Create a Framework for Maine's Spirits Contract) -
Stakeholder Group Report on Low-Alcohol Spirits Products

Senator Hickman, Representative Supica and Members of the Committee on Veterans and Legal Affairs:

The Bureau of Alcoholic Beverages and Lottery Operations (BABLO) was charged by PL 2021, c. 592, §B-4 with convening a stakeholder group to consider changes to current law that would allow retailers licensed to sell malt liquor or wine for on-premises or off-premises consumption that are not agency liquor stores to sell spirits products containing between 8% and 15% alcohol by volume, including but not limited to amending the definition of "low-alcohol spirits products" and creating a new category of spirits product that includes products commonly known as "ready-to-drink" cocktails.

Background & Current State

The definition of "low-alcohol spirits products" (28-A MRSA §2, sub-§16-A) has changed over the years. Established in 1992 with an ABV threshold of 4% at its outset, the threshold was modestly increased in 2005 to 6% and again in 2011 to 8% where it remains currently. The objective of increasing the threshold is to move those products containing spirits below the new ABV threshold from the State's distribution system to the beer and wine distribution system.

All spirits products with an ABV of greater than 8% are listed for sale by BABLO with the approval of the State Liquor and Lottery Commission and brought to market through Maine's network of Agency Liquor Stores. At the time of the stakeholder group, increasing the ABV threshold to 15% would capture over 350 listed products with an ABV of greater than 8% and less than 15%.

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Stakeholder Meetings

As charged by PL 2021, c.592 the Bureau convened three stakeholder meetings in the Fall of 2022 to consider changes to current law. These meetings were held at 19 Union Street in Augusta, with the option to participate via Zoom for those unable to attend in person.

The following groups participated in the meetings:

- American Distilled Spirits Alliance
- Bureau of Alcoholic Beverages and Lottery Operations (BABLO)
- Distilled Spirits Council of America (DISCUS)
- Hospitality Maine
- Maine Beer and Wine Wholesalers
- Maine Brewers' Guild
- Maine Center for Disease Control (CDC)
- Maine Department of Environmental Protection (DEP)
- Maine Distillers Guild
- Maine Energy Marketers Association
- Maine Grocers and Food Producers Association
- Maine Public Health Association
- Retail Association of Maine
- Wine Institute

The agendas for the meetings included the opportunity for each stakeholder group to provide their positions regarding changes to the current law on the following:

1. To allow malt liquor and wine retailers that are not agency liquor stores to sell spirits products with an ABV of between 8-15%;
2. To amend the definition of low-alcohol spirits products; and
3. To create a new category of spirits products.

Participating stakeholders were intractable in their positions from start to finish. Consensus was only able to be achieved around two points:

1. The increase to 15% ABV should only apply to single serving, small format containers 355ml /12oz or below. This would like require a definition of spirits-based RTDs to be codified.
2. The bottle redemption for spirits based RTD products should be \$.05.

Following the final stakeholder meeting, the Bureau sent a survey to all stakeholder members asking for their position on increasing the ABV threshold. Responses which do not include the Bureau are noted below, showing an even split in opinion among participants:

- 3- Recommend increase to 15% ABV threshold
- 3- Recommend no change to current law
- 2- Declined to provide recommendation
- 5- Did not respond

Proponents of Raising the Threshold

Those in support of increasing the ABV threshold for low-alcohol spirits products included the American Distilled Spirits Alliance, Distilled Spirits Council of the United States, Maine Beer and Wine Wholesalers, and Maine Distillers Guild.

The proponents were quick to clarify for the stakeholder group that their interest is limited to “single-serving” (355ml / 12oz or less) spirits-based Ready to Drink (RTD) products, and does not include other spirits-based products that may also fall between 8-15% ABV. Spirits-based RTDs have burst on to the scene in the last five years and proved popular among consumers, and in turn the number of products offered has grown considerably.

For the Maine Beer and Wine Wholesalers, their interest is in maintaining their existing distributor relationships as historically beer manufacturers expand their product line-ups to include spirits-based RTDs, rather than requiring those manufacturers and products to be listed and go through the State for distribution. LD 1492 in the 130th Legislature, which was the impetus for this stakeholder group, was sponsored at the behest of the Maine Beers and Wine Wholesalers.

For the American Distilled Spirits Alliance and the Distilled Spirits Council of the United States, their interest is expanding consumers’ access to spirits-based RTDs by increasing their availability from the approximately 600 agency liquor stores to 1200 additional licensed beer and wine retailers. The spirits manufacturers represented by both organizations currently list their products for distribution by the State and sale at Agency Liquor Stores.

The Maine Distillers Guild indicated that few instate distillers have expanded into RTDs at present, but that many are interested in exploring the option in the future.

Hospitality Maine also indicated interest on the part of some of their members who are on-premise licensees without a full-liquor license in offering spirits-based RTDs to their customers.

Stakeholders agreed that they would like the bottle deposit for these products to be \$.05, rather than the \$.15 that is currently applied to spirits products.

Opponents of Raising the Threshold

Those in opposition to increasing the ABV threshold for low-alcohol spirits products included the Bureau, Maine CDC, Maine Public Health Association, and Wine Institute.

Public health concerns were primary among those stakeholders opposed to increasing the ABV threshold. Opponents are concerned about tripling the number of retail outlets where higher proof spirits products can be purchased given the well documented relationship between increased access and increased consumption, especially knowing that alcohol consumption increased during COVID but having yet to see the long-ranging effects of that increase.

Both the Bureau and public health advocates raised concerns about the lack of resources dedicated to substance use prevention and enforcement capacity to mitigate the impact of expanded access.

Concurrent to the stakeholder group meeting, the Maine Sherriffs' Association was in the field conducting compliance checks of off-premise retailers across the state. Of the 561 compliances checks conducted, 100 licenses (17.8%) failed to card. By comparison the failure rate was 10.49% in 2018.

It was also succinctly noted that "low-alcohol" is a misnomer for products ranging from 8-15% ABV. Across standard drink equivalents a 12oz beer with a 5% ABV is considered one drink. A 12oz spirits-based RTD with a 15% ABV, may be perceived as a "single-serving," but it is actually the equivalent of three of the afore mentioned beers, and poses a risk that individuals will consume too much, too fast without realizing it.

Neither For Nor Against

The remaining organizations were hesitant to come down on one side or the other, either because their membership straddled both sides of the issue or they didn't feel like that knew enough to take position. The Maine Brewers Guild, and Maine Grocers and Food Producers Association and Retail Association of Maine, which have similar membership, raised some interesting concerns.

The Maine Brewer's Guild is concerned that: 1) space in retail sets and cold boxes is limited, and that the introduction of new products, especially by large national manufacturers, will crowd them out, and 2) with distributor consolidation is already occurring that representation available to small brewers will further deteriorate.

The Maine Grocers and Food Producers Association raised concerns that: 1) such a shift would reduce the value of an Agency Liquor Store license to businesses and 2) the potential for lost spirits sales could negatively impact the retail sales incentives to Agency Liquor Stores.

Bureau Position

In full disclosure, the Bureau opposed LD 1492 when it was heard by the Committee in 2021 and continues to oppose nearly doubling the low-alcohol spirits threshold by increasing it to 15%—especially considering previous increases have been by 2% each time and totaled 4%. When the Bureau attempted to press industry stakeholders about whether there was a lower, incremental increase that they could compromise around, they refused to budge from 15%. Likewise, the Bureau could not get a sense of how existing spirits-based RTDs already in the market fall on a curve between 0-15%.

The Bureau has concerns about the increase of outlets where these higher proof products would be made available. The Bureau has recently made ground with additional liquor enforcement staff being approved in the biennial budget that will take effect on October 25, 2023, but this additional headcount is still insufficient for the number of establishments the Bureau licenses, without adding additional enforcement demands.

Finally, under current law, spirits-based RTDs with an ABV of greater than 8% must be listed with the State and sold via Agency Liquor Stores. As this segment of alcoholic beverages show tremendous growth potential, why would the State give away these prospective product lines and

business potential? And if these new product lines are in direct competition with the State's existing product lines, could they contribute to a decline in State revenues?

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